IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

CRP.No. 784 of 2007()

AGAINST THE ORDER DATED 06/07/2007 IN IA 495/2007 IN
IN IA 1640/91 IN OS.73/1949 of ADL.SUB COURT, THALASSERY

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REVN. PETITIONERS: DEFENDANT NO.18,20,21 & LRS.OF D22:

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1. K.P.SHAHUL HAMEED, S/O.LATE SEPHIA UMMA,
   THAYATH HOUSE, KAYATH ROAD, TELLICHERRY-670101.

2. K.P.SUHARABI, D/O. DO.,
   RAMLA MANZIL, POOTHAPARA, P.O.AZHIKODE,
   KANNUR DISTRICT.

3. K.P.UMMER KUNHI, S/O.DO,
   KALLUKETTIYA PEEDIKAYIL KURUKKAN PADINHARE
   PURAYIL, AZHIKODE AMSOM DESOM, KANNUR DISTRICT.

4. M.P.HAMEED, S/O. DO,
   K.P.M.HOUSE, PAPPINISSERY, KANNUR DISTRICT.

5. RASIYA, D/O.HAMEED,
   -DO-, -DO-.

6. SABIRA, D/O.HAMEED,
   -DO-,

7. K.P.MUNEER, S/O.HAMEED,
   -DO-, -DO-.

8. K.P.M.SHAFI, S/O.HAMEED,
   -DO-,-DO-.

9. SAMEERA, D/O. -DO-,-DO-.

10. SHUHAIBA.K.P., D/O. -DO-, -DO-.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

RESPONDENTS:PLAINTIFF & DEFNTS. 1-17, 19, 23-51 & LRS. OF DECEASED DEFENT.

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1. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL HAMEED, SEPHIA MANZIL,
POOTHAPPARA, AZHIKODE AMSOM DESOM, KANNUR DIST.

2. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KUNHALIYUMMA, D/O.MAMMAD,
AZHIKODE AMSOM DESOM, KANNUR DIST.

3. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL MAMMAD KUNHI, D/O.MAMMAD,
AZHIKODE AMSOM DESOM, KANNUR DIST.

4. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL ABDULLA KUNHI,
AZHIKODE AMSOM DESOM, KANNUR DIST.

5. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL ABDUL JABAR,
D/O.MAMMAD,AZHIKODE AMSOM DESOM, KANNUR DIST.

6. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL MOIDU @ MOIDEENKUTTY,
AZHIKODE AMSOM DESOM, KANNUR DIST.

7. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL ASMU, S/O.SAINAVA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

8. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL ABDUL KHADER,
AZHIKODE AMSOM DESOM, KANNUR DIST.

9. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL MAMMAD KUNHI,
AZHIKODE AMSOM DESOM, KANNUR DIST.

10. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL MARIYAM,
AZHIKODE AMSOM DESOM, KANNUR DIST.

11. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL SAYINAVA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

12. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KATHEESUMMA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

13. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KUNHIPATHU,
AZHIKODE AMSOM DESOM, KANNUR DIST.

14. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KUNHAMINA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

15. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KADIJA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHARE PURAYIL NAFEESU (DIED) - 22nd DEFENDANT

16. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL SAYINAVA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

17. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KATHEESUMMA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

18. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KUNHAMMU,
AZHIKODE AMSOM DESOM, KANNUR DIST.

19. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL MARIYAM,
AZHIKODE AMSOM DESOM, KANNUR DIST.

20. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL RABI,
AZHIKODE AMSOM DESOM, KANNUR DIST.

21. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KUNHAISSU,
AZHIKODE AMSOM DESOM, KANNUR DIST.

22. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL UMMERKUNHI,
AZHIKODE AMSOM DESOM, KANNUR DIST.

23. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL KUNHAMINA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

24. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL ASSIMA,
AZHIKODE AMSOM DESOM, KANNUR DIST.

25. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL IBRAHIM,
AZHIKODE AMSOM DESOM, KANNUR DIST.

26. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL MAMMAD KUNHI,
AZHIKODE AMSOM DESOM, KANNUR DIST.

27. KALLUKETTIYA PEEDIKAYIL KURUKKAN-
PADINHAREPURAYIL ISMAIL,
AZHIKODE AMSOM DESOM, KANNUR DIST.

28. POOVAN KULATHIL HAMEED,
AZHIKODE AMSOM DESOM, KANNUR DIST.

29. POOVAN KULATHIL UMMER KUNHI,
AZHIKODE AMSOM DESOM, KANNUR DIST.

30. POOVAN KULATHIL SAINAVAS,
AZHIKODE AMSOM DESOM, KANNUR DIST.

31. BAPPIRAMBATH KUNHI PATHU,
AZHIKODE AMSOM DESOM, KANNUR DIST.

32. BAPPIRAMBATH IBRAHIM KUTTY,
AZHIKODE AMSOM DESOM, KANNUR DIST.

33. BAPPIRAMBATH KUNHAMMU,
AZHIKODE AMSOM DESOM, KANNUR DIST

34. BAPPIRAMBATH ASMABI,
AZHIKODE AMSOM DESOM, KANNUR DIST

35. BAPPIRAMBATH SHAHUL HAMEED,
AZHIKODE AMSOM DESOM, KANNUR DIST

36. BAPPIRAMBATH MUSTHAFA,
AZHIKODE AMSOM DESOM, KANNUR DIST

37. BAPPIRAMBATH RASHEED,
AZHIKODE AMSOM DESOM, KANNUR DIST

38. BAPPIRAMBATH SUBAIDA,
AZHIKODE AMSOM DESOM, KANNUR DIST

39. NADULAKANDY PUTHIYA PURAYIL ASMABI,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

40. NADULAKANDY PUTHIYA PURAYIL ABDUL SALAM,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

41. NADULAKANDY PUTHIYA PURAYIL HAMEED,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

42. NADULAKANDY PUTHIYA PURAYIL SAIBU,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

43. NADULAKANDY PUTHIYA PURAYIL JAMEELA,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

44. NADULAKANDY PUTHIYA PURAYIL RABIA,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

45. MADATHILA PEEDIKAYIL KUNHAMINA,
AZHIKODE AMSOM DESOM,KANNUR DISTRICT.

46. MADATHILA PEEDIKAYIL HAMEED,
AZHIKODE AMSOM DESOM,KANNUR DISTRICT.

47. MADATHILA PEEDIKAYIL UMMER,
AZHIKODE AMSOM DESOM,KANNUR DISTRICT.

48. MADATHILA PEEDIKAYIL AYISSU,
AZHIKODE AMSOM DESOM,KANNUR DISTRICT.

49. PARAMBATH KOTTAKKAN VALAPPIL KUNHAMINA,
AZHIKODE AMSOM DESOM,KANNUR DISTRICT.

50. PARAMBATH KOTTAKKAN VALAPPIL ABDULLA,
AZHIKODE AMSOM DESOM,KANNUR DISTRICT.

51. PARAMBATH KOTTAKKAN VALAPPIL RAFI,
AZHIKODE AMSOM DESOM,KANNUR DISTRICT.

52. BAPPIRAMBATH SAINABA,
NEAR MUNICIPAL OFFICE,PAYYANNUR,KANNUR DISTRICT.

53. BAPPIRAMBATH RAFEEQUE,
NEAR MUNICIPAL OFFICE,PAYYANNUR,KANNUR DISTRICT.

54. BAPPIRAMBATH RAHIYANATH,
NEAR MUNICIPAL OFFICE,PAYYANNUR,KANNUR DISTRICT.

55. BAPPIRAMBATH KUNHAMSA,
NEAR MUNICIPAL OFFICE,PAYYANNUR,KANNUR DISTRICT.

56. BAPPIRAMBATH FATHIMA,
NEAR MUNICIPAL OFFICE,PAYYANNUR,KANNUR DISTRICT.

57. BAPPIRAMBATH ABDUL RATHAS,
NEAR MUNICIPAL OFFICE,PAYYANNUR,KANNUR DISTRICT.

58. BAPPIRAMBATH YOUSUF,
NEAR MUNICIPAL OFFICE,PAYYANNUR,KANNUR DISTRICT.

59. KELOTH KATHIJA,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

60. KELOTH NAJUMA,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

61. KELOTH ASHRAF,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

62. KELOTH MOHAMMED HASSIM,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

63. KELOTH MUHAMMED MUSTHAFA,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

64. KELOTH NAZAR,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

65. KELOTH RAFI,
PALLIKUNNU AMSOM,CHALAD DESOM,KANNUR DISTRICT.

66. THARAYIL PEEDIKAYIL KUNHAMINA,
D/O.RABIA UMMA,POOTHAPPARA,AZHIKODE AMSOM DESOM,
KANNUR DISTRICT.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.784 of 2007

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Dated this the 11th day of September, 2007.

ORDER

This Civil Revision Petition is preferred against the order of the Subordinate Judge, Thalassery in I.A.No.495 of 2007 in I.A.No.1640 of 1991 in O.S.No.73 of 1949. The suit was one for partition and a preliminary decree had been passed and the final decree application is pending as I.A.No.1640 of 1991.

2. Dispute as far as this petition is concerned, relates to item No.29 of the plaint schedule. Petition filed by the legal representatives of Safiya Umma, who are defendants 18 to 22 to exclude item No.29 from the partition on the ground that she had kuzhikanam right over the property which had later matured into an absolute tenancy which is protected as there is fixity of tenure for them and so cannot be divided. The court below found that there had been a finding about this item No.29 also in the preliminary decree and it has become conclusive by the judgment

of the District Court and therefore, in the final decree proceedings, it cannot be entertained.

3. Learned counsel for the revision petitioner in fairness had given me for perusal of the first judgment of the court, which is dated 24.9.1954. In paragraph 95, the court has dealt with the contentions of the female members of the tarwad. The court found that the female members who have possession of parambas under Sthreedhanam grant will be entitled to reservation of the improvements made by them in those parambas. They are entitled to reservation of only improvements made after they got possession. It is made very clear that "there will be no reservation of the property in their favour". So, what is preserved and protected by paragraph 95 of the judgment is the entitlement for the female members to have improvements value especially when they are made by them after they got possession. The said paragraph specifically negatives of any reservation of the property in their favour.

4. Appeals were disposed of only in the year 1999 and by the time, the Land Reforms Act have come into force and this point has been confirmed and had not been varied or changed by

the appellate court as well. Therefore, I find nothing irregular or illegal in the finding of the learned Subordinate Judge. Question of entitlement of these persons to have fixity of tenure over item No.29 of the plaint schedule property cannot be considered in the final decree proceedings.

Civil Revision Petition is dismissed.

M.N.Krishnan,
Judge.

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